

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE LAUREL BEELER, MAGISTRATE JUDGE

GROUSE RIVER OUTFITTERS,)	
LTD.,)	
)	
Plaintiff,)	
)	
v.)	NO. 3:16-cv-02954-LB
)	
ORACLE CORPORATION, et al.,)	
)	
Defendants.)	San Francisco, California
)	Thursday, January 17, 2019

TRANSCRIPT OF OFFICIAL ELECTRONIC SOUND RECORDING
OF PROCEEDINGS

FTR 9:37 a.m. - 10:30 a.m., 10:36 a.m. - 10:39 a.m.
and 10:50 a.m. - 11:04 a.m. = 69 minutes

APPEARANCES:

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For Defendants Netsuite, Inc. and Oracle Corporation:

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BY: **SCOTT D. GATTEY, ESQ.**

(Appearances continued on following page.)

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1 **MR. KIEVE:** I understand.

2 **THE COURT:** Maybe not -- I mean, maybe it's a wiser
3 course to listen to you first and then say it, but I thought,
4 from a case management perspective, especially because every
5 time Mr. Gattey looks at me, I think he -- I mean, every time
6 he comes to court, he looks disappointed in my summary judgment
7 approach, and I thought it useful to kind of nail where we were
8 to a conversation, but I do, I am interested in hearing your
9 argument.

10 **MR. KIEVE:** Um, the nub, the heart of Sterling's,
11 Perry's -- whatever he wants to call himself -- report, is you
12 take a look at the economic conditions facing the world, and
13 you take a multi-store, very large Canadian outfitter called
14 Wholesale Sports, and you then compare it to a single-store
15 premium outfitter called Grouse River, and he comes up with the
16 most bizarre concepts that I've ever seen in my life.

17 And I'll tell you why filed the motion. It was
18 because I normally don't take experts' depositions. It's much
19 more fun to get them at trial when you've not given them any
20 advance warning, and because, thanks to Judge Schwarzer,
21 they're limited to the text of their report --

22 **THE COURT:** Exactly.

23 **MR. KIEVE:** -- and so I was looking at this and
24 I said, well, I don't need to take this guy's deposition
25 because I'm going to lacerate him, I'm going to destroy him at

1 trial, and I said, why should I take the time to do that, when
2 he is so unqualified?

3 The first and foremost requirement of a rule arising
4 out of *Daubert* is that you have to link the expert's, quote,
5 "expertise" with what he is opining on, and the mere fact that
6 somebody has a CPA or is qualified in business valuation gives
7 you no link whatsoever to what this man is talking about, which
8 is to say, okay, I'm going to read a, quote, "analyst" -- it's
9 actually one little analyst quoting second-, third-hand
10 hearsay -- has reported that this, quote, "trend" -- he doesn't
11 identify "trend" -- was affecting all, quote, "big box stores."

12 Well, Grouse River is not a big box store, and so
13 the first order --

14 **THE COURT:** It's not a Best Buy is what you're
15 saying, yes.

16 **MR. KIEVE:** Okay, and so the heart of his opinion is
17 that because -- and this is the main point that I want to
18 make -- he never, never talks about what Netsuite did to my
19 client. He simply mentions these, quote, "software problems."
20 And so let me get back to my main point.

21 In order to have a qualified opinion, you first have
22 to have somebody who is qualified to testify within the field
23 he is purporting to testify. There is nothing, absolutely
24 nothing, in his report in does that. And so out of the box,
25 he's automatically disqualified.

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3 **CERTIFICATE OF TRANSCRIBER**
4

5 I, Leo Mankiewicz, certify that the foregoing is a
6 true and correct transcript, to the best of my ability, of the
7 above pages of the official electronic sound recording provided
8 to me by the U.S. District Court, Northern District of
9 California, of the proceedings taken on the date and time
10 previously stated in the above matter.

11 I further certify that I am neither counsel for,
12 related to, nor employed by any of the parties to the action in
13 which this hearing was taken; and, further, that I am not
14 financially nor otherwise interested in the outcome of the
15 action.

16  01/18/2019
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18 Signature of Transcriber

Date

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